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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 **Lizette Garcia**, an individual,

12 Plaintiff,

13 v.

14 **Credit One Bank, N.A.**,

15 Defendant.
16

Case No. '16CV0706 BEN JLB

Complaint for Damages

Jury Trial Demanded

17
18 1. Lizette Garcia ("Plaintiff"), brings this action for damages, injunctive
19 relief, and any other available legal or equitable remedies, resulting from the
20 unlawful and abusive attempts by Credit One Bank, N.A. ("Defendant"), and its
21 agents to collect a debt, causing Plaintiff damages.

22 2. For purposes of this Complaint, unless otherwise indicated,
23 "Defendant" includes all agents, employees, officers, members, directors, heirs,
24 successors, assigns, principals, trustees, sureties, subrogees, representatives and
25 insurers of Defendant named in this caption.

26 **Jurisdiction and Venue**

27 3. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 47
28 U.S.C. § 227, and under 28 U.S.C § 1367 for pendant state law claims.

1 various communications with Plaintiff discussed in this Complaint all fall within
2 the term “debt collection” as that term is defined by Cal. Civ. Code § 1788.2(b).

3 11. Plaintiff opened an account with Defendant in late 2014 or early
4 2015 and used it to pay a water bill for her home in the amount of approximately
5 two hundred (\$200.00) dollars. The alleged debt was incurred for personal,
6 family, or household purposes and therefore meets the definition of a consumer
7 debt under Cal. Civ. Code § 1788.2(f).

8 12. When she received her first bill from Defendant, it included not
9 only the \$200 charge but also a \$75 fee for “account opening,” which she
10 immediately disputed. Unable to resolve the matter to her satisfaction, Plaintiff
11 instructed Defendant to close the account and paid the \$200 for the water bill
12 she had charged to the account. Defendant, however, wrong believes that
13 additional amounts are owed and has undertaken a ceaseless campaign of
14 telephone harassment to convince Plaintiff to pay additional money.

15 13. Plaintiff is a subscriber to cellular telephone services for a telephone
16 number ending in 5138, where she received the calls from Defendant complained
17 of herein.

18 14. Beginning on or before May 14, 2015, Defendant initiated multiple
19 telephonic communications from various telephone numbers to Plaintiff’s
20 cellular telephone number ending in 5138 using an automatic telephone dialing
21 system (“ATDS”) as defined by 47 U.S.C. § 227(a)(1) and/or an artificial or
22 prerecorded voice, as prohibited by 47 U.S.C. § 227 (b)(1)(A).

23 15. This ATDS used by Defendant to call Plaintiff had the capacity to
24 store or produce telephone numbers to be called, using a random or sequential
25 number generator.

26 16. Each of these calls was an attempt to collect on a consumer debt
27 allegedly due and owing by Plaintiff; the balance Defendant is trying to collect is
28 less than five hundred dollars.

1 17. The calls continue to the present day and come virtually every day
2 and often more than once per day. A list of the calls presently known to Plaintiff
3 is set forth as Exhibit “A” to this Complaint and is incorporated herein by
4 reference.

5 18. These calls are harassing, repetitive, and deliberately calculated to
6 intrude on Plaintiff’s privacy. Examples of the abusive pattern and practice of
7 calling are:

8 19. In June 2015, Defendant called Plaintiff’s cellular telephone number
9 ending in 5138 not less than 94 times and called every day except for June 13,
10 2015.

11 20. In July 2015, Defendant called Plaintiff’s cellular telephone number
12 ending 5138 not less than 258 times and called every day except for July 4, 2015.

13 21. In August 2015, Defendant called Plaintiff’s cellular telephone
14 number ending 5138 not less than 251 times between August 1 and August 27,
15 the only dates for which data is available.

16 22. In September 2015, Defendant called Plaintiff’s cellular telephone
17 number ending 5138 not less than 181 times between September 8 and September
18 30, the only dates for which data is available.

19 23. In October 2015, Defendant called Plaintiff’s cellular telephone
20 number ending 5138 not less than 291 times and called every day without
21 exception.

22 24. In November 2015, Defendant called Plaintiff’s cellular telephone
23 number ending 5138 not less than 103 times.

24 25. In total, Plaintiff received at least 1,253 calls from Defendant on her
25 cellular telephone number ending 5138 through November 30, 2015.

26 26. The calls from Defendant continue to the present day and Plaintiff
27 seeks discovery to determine the exact number and timing. Based on the call
28

1 history, Plaintiff conservatively estimates that well in excess of 2,000 calls have
2 been placed by Defendant to her cellular telephone number ending 5138.

3 27. None of the calls were made with Plaintiff's express consent.

4 28. Each of the calls were made by Defendant or a third party acting on
5 its behalf and under its control using telephone equipment that meets the
6 definition of an "automatic telephone dialing system" under the TCPA.

7 29. Plaintiff answered several of the above mentioned autodialed
8 telephone calls from Defendant and asked Defendant to stop calling. Despite this
9 clear and unmistakable request, the calls continue without interruption. Each of
10 these requests terminated any express or implied consent that Defendant may
11 have had prior to beginning its campaign of harassment by telephone.

12 30. Several of the calls when answered played a pre-recorded message.

13 31. At various times, Defendant programmed its telephone dialing
14 system to show as the incoming caller ID number telephone numbers in the 619,
15 858, and 760 area codes.

16 32. Upon information and belief, Plaintiff alleges that Defendant has no
17 call center in the 619, 858, or 760 area code and instead used false and
18 misleading caller ID information in a calculated effort to increase the rate at
19 which Plaintiff and other consumers would answer Defendant's collection calls.

20 33. Plaintiff on numerous occasions did answer Defendant's collection
21 calls when showing a 619, 858, or 760 caller ID area code, believing it to be a
22 friend or relative.

23 34. When Defendant began employing false and deceptive caller ID
24 information for its incoming calls, Defendant tricked Plaintiff into answering
25 many calls she did not intend to take, causing increased telephone charges.

26 35. Plaintiff also began to ignore or send to voice mail many incoming
27 calls from numbers she did not recognize, out of frustration in dealing with
28

1 Defendant's unwanted and intrusive calls. In doing so, she missed many
2 important communications from friends and family.

3 36. Plaintiff's cellular telephone number ending in 5138 was assigned to
4 a cellular telephone service for which Plaintiff incurred a charge for incoming
5 calls and texts pursuant to 47 U.S.C. § 227(b)(1).

6 37. These telephone communications constituted communications that
7 were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

8 38. Plaintiff did not provide prior express consent to receive calls or
9 messages placed utilizing an ATDS, as required by 47 U.S.C. § 227 (b)(1)(A).

10 39. These telephone communications by Defendant, or its agent, violated
11 47 U.S.C. § 227(b)(1).

12 40. Additionally, Defendant used an artificial and/or pre-recorded voice
13 to make calls to Plaintiff's cellular telephone, which is a separate and
14 independent violation of the TCPA and makes Defendant liable for additional
15 statutory damages.

16 41. Through this conduct of calling Plaintiff and causing a telephone to
17 ring or engaging any person in telephone conversation repeatedly or continuously
18 with intent to annoy, abuse or harass any person at the called number,
19 Defendant engaged in conduct the natural consequence of which is to harass,
20 oppress or abuse any person in connection with the collection of the debt, in
21 violation of 15 U.S.C. § 1692d(5), which is incorporated into the RFDCPA by
22 Cal. Civ. Code § 1788.17. Through this conduct, Defendant violated Cal. Civ.
23 Code § 1788.17.

24 42. Through this conduct of calling Plaintiff continuously after Plaintiff
25 informed Defendant numerous times that Plaintiff wished the calls to cease,
26 Defendant used false, deceptive, or misleading representations in connection with
27 the collection of any debt, in violation of 15 U.S.C. § 1692e, which is
28

1 incorporated into the RFDCPA by Cal. Civ. Code § 1788.17. Through this
2 conduct, Defendant violated Cal. Civ. Code § 1788.17.

3 43. Through this conduct of calling Plaintiff using deliberately false
4 caller ID area code information, Defendant used false, deceptive, or misleading
5 representations in connection with the collection of any debt, in violation of 15
6 U.S.C. § 1692e, which is incorporated into the RFDCPA by Cal. Civ. Code §
7 1788.17. Through this conduct, Defendant violated Cal. Civ. Code § 1788.17.

8 44. Each of the above-described practices and conduct outlined in the
9 preceding paragraphs also constitute unfair or unconscionable means to collect or
10 attempt to collect any debt in violation of 15 U.S.C. § 1692f, which is
11 incorporated into the RFDCPA by Cal. Civ. Code § 1788.17. Through this
12 conduct, Defendant violated Cal. Civ. Code § 1788.17.

13 45. Through this conduct of calling Plaintiff by means of an ATDS to a
14 telephone number assigned to cellular service without first obtaining Plaintiff's
15 express consent in order to collect on a consumer debt, Defendant used unfair or
16 unconscionable means to collect or attempt to collect any debt, in violation of 15
17 U.S.C. § 1692f, which is incorporated into the RFDCPA by Cal. Civ. Code §
18 1788.17. Through this conduct, Defendant violated Cal. Civ. Code § 1788.17.

19 46. Plaintiff felt frustrated, angry, and helpless as a result of the calls.
20 The unrelenting, repetitious calls disrupted Plaintiff's daily activities and
21 peaceful enjoyment of her personal life.

22 47. The calls placed by Defendant to Plaintiff were extremely intrusive
23 into Plaintiff's personal life by both pattern and volume, and had a detrimental
24 affect on her relationships with close family members.

25 48. Defendant is no stranger to TCPA litigation. On January 24, 2013, a
26 consumer filed a putative national class action against Defendant alleging
27 violations of the TCPA for making calls using an ATDS to call her cell phone.
28 *Foote v. Credit One Bank, N.A.*, Case No. 2:13-cv-512 (C.D.Cal.). This lawsuit was

1 resolved but during the time when Defendant was placing calls to Plaintiff
 2 complained of here, it was facing at least three other national class actions for
 3 similar TCPA claims. See, e.g., *Bridge v. Credit One Financial, d/b/a Credit One Bank,*
 4 *N.A.*, Case No. 2:14-cv-1512 (D.Nev., filed Sept. 17, 2014); *Kristensen v. Credit One*
 5 *Bank, N.A.*, Case No. 2:14-cv-7963 (C.D.Cal., filed Oct. 15, 2014); *A.D. v. Credit One*
 6 *Bank, N.A.*, Case No. 1:14-cv-10106 (N.D.Ill., filed Dec. 17, 2014).

7 49. Despite knowing its obligations under state and federal law to
 8 refrain from placing unconsent calls to consumers' cell phones, Defendant
 9 nevertheless placed more than two thousand calls to Plaintiff's cell phone in
 10 deliberate disregard of those duties and obligations.

11 **First Claim for Relief**

12 **Telephone Consumer Protection Act — 47 U.S.C. § 227(b)(1)**

13 50. Plaintiff incorporates by reference all of the above paragraphs of this
 14 Complaint as though fully stated herein.

15 51. Within a four-year period immediately preceding this action,
 16 Defendant made more than two thousand calls to Plaintiff's cellular telephone
 17 service using an automatic telephone dialing system and/or an artificial or
 18 prerecorded voice in violation of the TCPA.

19 52. As a direct and intended result of the above violations of the TCPA,
 20 Defendant caused Plaintiff to sustain damages.

21 53. Defendant did not have prior express consent from Plaintiff to use
 22 an ATDS or to employ an artificial or prerecorded voice to call the Plaintiff's
 23 cellular telephone.

24 54. Under 47 U.S.C. § 227(b)(3)(B), Plaintiff is entitled to statutory
 25 damages under the TCPA of not less than \$500.00 for each and every violation
 26 pursuant to 47 U.S.C. § 227(b)(3)(B).

1 62. Defendant breached Defendant's respective duties by engaging in the
2 acts described herein each in violation of the statutes alleged herein.

3 63. Plaintiff asserts that Defendant is both the actual and legal cause of
4 Plaintiff's injuries.

5 64. Plaintiff believes and thereon alleges that as a proximate result of
6 Defendant's negligence, Plaintiff has suffered significant emotional distress.

7 65. Due to the egregious violations alleged herein, Plaintiff asserts that
8 Defendant breached Defendant's respective duties in an oppressive, malicious,
9 despicable, gross and wantonly negligent manner. As such, said conduct
10 Defendant's conscious disregard for Plaintiff's rights entitles Plaintiff to recover
11 punitive damages from Defendant.

12 **Fourth Claim for Relief**

13 **Invasion of Privacy**

14 66. Plaintiff re-alleges and incorporates by reference the above
15 paragraphs as through set forth fully herein.

16 67. Plaintiff had an objectively reasonable expectation of privacy at
17 home, at work, and when conducting her daily affairs, to expect that she would
18 not be subject to a dozen or more phone calls every day for months at a time.
19 Defendant's unrelenting campaign of harassment by placing nearly a thousand
20 repeated phone calls intruded into this reasonable expectation of privacy.

21 68. The frequency and cumulative volume of Defendant's phone calls
22 were received in a manner that would be highly offensive to a reasonable person
23 in the same or similar circumstances.

24 ///

Jury Trial Demand

69. Plaintiff demands a jury trial on each of the causes of action set forth above, including the amount of statutory damages.

Prayers for Relief

Wherefore, Plaintiff respectfully prays that judgment be entered against Defendant for the following:

1. An injunction against the calling of Plaintiff's cellular telephone by Defendant and its contractors, agents and employees;
2. Damages pursuant to 47 U.S.C. § 227(b)(3);
3. Damages pursuant to Cal. Civ. Code §§ 1788.17 and 1788.30;
4. General, special, and punitive damages according to proof;
5. Costs of litigation and reasonable attorneys' fees;
6. Such other and further relief as the Court may deem just and proper

Dated: March 23, 2016

Ankorn Law Firm, PC

/s/ Mark Ankorn

Attorneys for Plaintiff